



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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November 21, 1973

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David Wade, M. D., Commissioner
Texas Department of Mental Health
and Mental Retardation
Box 12668
Capitol Station
Austin, Texas 78711

Open Records Decision No. 12

Dear Dr. Wade:

The question presented by your letter of October 17, 1973, is the following: May the Department of Mental Health and Mental Retardation, in view of the provisions of Articles 5547-87 and 6252-17a, Tex. Rev. Civ. Stat. Ann. arts. 5547-87 and 6252-17a, and Attorney General Opinion H-90, "permit Colonel Speir and Doctors LeMaistre and Peavy and personnel of their respective departments to have access to medical records maintained by MHMR institutions to be used in connection with the investigation requested by the Committee on Human Resources of the Texas House of Representatives?"

Article 6252-17a, Tex. Rev. Civ. Stat. Ann. art. 6252-17a, House Bill 6, specifies that all information that does not fall within one of sixteen excepted categories is public information. Section 3(a)(1) of House Bill 6 maintains the confidentiality of information hitherto deemed confidential by law. Does Article 5547-87 bring the MHMR medical files within Section 3(a)(1) of House Bill 6?

Article 5547-87 provides:

"(a) Hospital records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where

"(1) consent is given by the individual identified, his legal guardian, or his parent if he is a minor;

"(2) disclosure may be necessary to carry out the provisions of this Code;

"(3) a court directs upon its determination that disclosure is necessary for the conduct of proceedings before it..., or

"(4) the Board or head of the hospital determines that disclosure will be in the best interest of the patient." (emphasis added).

Since it is the purpose of the Mental Health Code "to provide humane care and treatment for the mentally ill", Tex. Rev. Civ. Stat. Ann. art. 5547-2, and since Representative Truan has expressed the purpose of this legislative investigation to be the "correcting [of] any deficiencies or abuses which may be found to exist" in the Mental Health program, it would not seem an unreasonable conclusion that the disclosure of these particular MHMR files, if limited to use for the stated purposes only, would be necessary to carry out the provisions of the Code pursuant to 5547-87(a)(2).

We do not find it necessary to reach that conclusion because we have determined the pertinent information to be available to Colonel Speir and Doctors LeMaistre and Peavy and their agencies under Tex. Rev. Civ. Stat. Ann. art 5429, sec. 18 (1972), which states:

"Sec. 18. Each standing committee is hereby authorized and empowered to request the assistance, where needed in the discharge of its duties, of the State Auditor's Department, The Texas Legislative Council, the Texas Department of Public Safety, the Attorney General's Department, and all other State agencies, departments and offices, and it shall be the duty of such departments, agencies and offices to assist each such committee when requested to so do. Each Committee shall have the power to inspect the records, documents and files of every department, agency, and office of the State, to the extent necessary to the discharge of its duties within the area of its jurisdiction." (emphasis added).

Under Section 5 of the same Act, standing committees of the Legislature are given

"the duty and responsibility of formulating legislative programs, initiating legislation, and making inquiry into the administration and execution of all laws pertaining to matters within the jurisdiction of such committee." (emphasis added).

Rule 7, Section 10 of the Rules of the House of Representatives, 63rd Legislature (1973), gives the House Standing Committee on Human Resources jurisdiction over "... (4) all matters pertaining to the Texas Department of Mental Health and Mental Retardation, its organization, powers, functions and responsibilities".

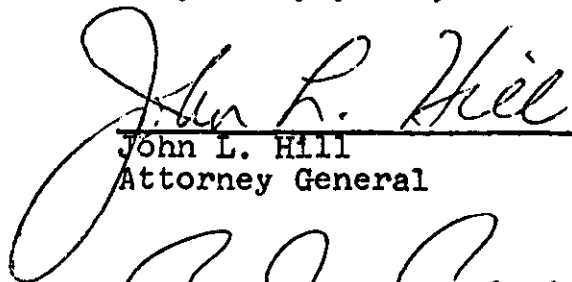
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We interpret these measures to give standing committees the power to inspect the files of every department, agency, and office of this State to the extent necessary to the discharge of its duties within the area of its jurisdiction and in the furtherance of a legitimate legislative purpose.

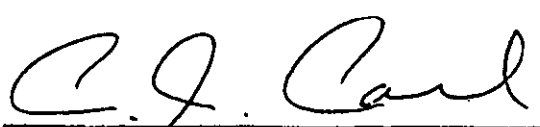
This decision on the accessibility of MHMR medical files is limited to a conclusion requiring disclosure to Colonel Speir, and Doctors LeMaistre and Peavy and their respective agencies in the performance of their legislatively directed investigation. In the execution of their assignment the Departments of Public Safety and Public Health and The University of Texas System should make provision to assure the continued confidentiality of MHMR files. See Tex. Rev. Civ. Stat. Ann. art 5547-87 and Attorney General Opinion H-90 (1973).

For the above reasons, and with the aforementioned limitations, MHMR medical files are disclosable to Colonel Speir and Doctors LeMaistre and Peavy and their respective organizations, acting for a House Standing Committee.

Very truly yours,



John L. Hill
Attorney General



C. J. Carl
Staff Legislative Assistant